EDITOR'S NOTE

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

ELLIS H. GILLELAND,
Petitioner,

v.

LARRY M. DUBUISSON,
OLIVIA R. EUDALY,
ALTON F. HOPKINS, JR.,
MIKE LEVI,
ROBERT D. LEWIS,
MARY E. MAINSTER,
GUY A. SHEPPARD,
FRED K. SOIFER,
CLARK S. WILLINGHAM,
individually, jointly as members of the
Texas State Board of Veterinary Medical Examiners,
and severally,
Respondents.

On Petition for Writ of Certiorari
To The Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

Ellis H. Gilleland
P.O. Box 9001
Austin, Texas 78766

5400

QUESTIONS PRESENTED

I

Did Judge W. Jeanne Meurer abuse her governmental power and discretion in conducting a kangaroo court on 8 January 1993, in conformance with prior *ex parte* communications with State attorneys, whereby Petitioner Gilleland was denied his U.S. Constitutional 14th Amendment due-process rights, fair trial, and a previously demanded trial by jury?

II

Did Judge W. Jeanne Meurer abuse her governmental power and discretion in the kangaroo court on 8 January 1993, by punishing Petitioner Gilleland with an excessive fine in the form of attorney fees of approximately $11,000 in addition to case dismissal, in violation of his U.S. Constitutional protection under the 8th Amendment?

III

Did the Third Court of Appeals in Austin, Texas deny Petitioner Gilleland U.S. Constitutional 14th Amendment due-process rights, and a fair appellate review, by acting as an advocate for the Texas governmental respondents, in responding to and rebutting 46 of 68 points of error that were not challenged by respondents themselves?

IV

Did the Third Court of Appeals in Austin, Texas, deny Petitioner Gilleland U.S. Constitutional 14th Amendment due-process rights, and a fair appellate review, by reviewing his request for a rehearing with only one appellate justice, in violation of Texas Rules of Appellate Procedure, Rule 19 (f)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
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No. _____

ELLIS H. GILLELAND,
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Petitioner Ellis H. Gilleland respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

FEDERAL COURTS

There are no opinions from Federal courts in this case.

STATE COURTS

The opinion of the highest state court to review the merits, the Court of Appeals for the Third District of Texas at Austin, appears at Appendix A to this petition. It was not designated for publication.

JURISDICTION

The date on which the highest state court decided this case was 21 September 1995. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the 27th of October 1995. A copy of the order denying rehearing appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S. C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, 14th Amendment

Do the "due process" provisions of the 14th Amendment provide for a non-kangaroo court and trial that has not been rigged and preplanned *ex parte* by Texas State Assistant Attorneys General with the District Court Judge - prior to and outside the court held on 8 January 1993?

U.S. Constitution, 14th Amendment

Do the "due process" provisions of the 14th Amendment provide for a non-kangaroo court and trial and prohibit evidence, data or information presented *ex parte* by Texas State Assistant Attorneys General to the District Court Judge outside the courtroom, before the trial on 8 January 1993?

U.S. Constitution, 14th Amendment

Do the "due process" provisions of the 14th Amendment provide for a non-kangaroo court and trial and prohibit bias and prejudice against Petitioner Gilleland, which develop in the *ex parte* social relationship between the State attorney and the District Court Judge outside the courtroom?

U.S. Constitution, 8th Amendment

Does the imposition of a fine in the form of attorney fees amounting to approximately $11,000 constitute a violation of Petitioner's right and safeguard against an "excessive fine"?

U.S. Constitution, 14th Amendment

Does the gratuitous defense of governmental respondents by the Third Court of Appeals in its decision of 18 January 1995, wherein the appellate court answers and rebuts 46 of 68 points of error that respondents did not challenge - constitute an egregious example of bias, prejudice and denial of Petitioner's "due process" right?

U.S. Constitution, 14th Amendment

Does the denial of Petitioners motion for rehearing by a single justice in the Third Court of Appeals on 2 February 1995, in violation of Texas Rules of Appellate Procedure, Rule 19 (f), constitute a denial of Petitioner's "due process" right?

STATEMENT OF THE CASE

Service of Citations

This case began life on 10 June 1992, as a Petition for Temporary Injunction against the nine-members of the Texas State Board of Veterinary Medical Examiners; to enjoin the

board secretary from unilaterally conducting "board business," to wit: dismissing board complaints, not docketing complaints against veterinarians for hearing before a board quorum, and making final decisions on complaints outside of a legal six-member quorum of Respondents.

As shown by the appeal record Petitioner Gilleland attempted until 18 December 1992, to obtain all the home addresses of the nine board members and serve all the individual citations.

The Aborted Deposition

In compliance with Respondents' subpoena duces tecum, Petitioner Gilleland went to the venue of Attorney Riggs' office on 29 December 1992, to answer oral questions, to be recorded by the Texas State Board of Veterinary Medical Examiners court-reporter, Ms. Linda Cameron.

To be noted at this point is the foretelling on 22 December by Petitioner Gilleland, of what would result from Respondents' deposition session set for 29 December 1992. Specifically, in the prayer points at the bottom of page 2 of Petitioner's "Motion for Discovery Protective Order," filed on 22 December 1992. (see App. Tr., pp. 209 and 210), Petitioner Gilleland asked the Court:

"• • protect Plaintiff Gilleland from harassment and threat to his physical safety, by a change to a 'neutral' venue for deposition taking,

• • protect Plaintiff from corruption in the deposition taking process, by allowing written, rather than oral

questions, pursuant to RCP, Rule 208,

• • protect Plaintiff from corruption in the deposition recording process, by ordering that a 'neutral' court-reporter record said deposition."

As shown by Petitioner's "Affidavit of Deposition Taking," (see App. Tr. p. 240 ff), Petitioner was harassed at the non-neutral venue, by the obviously pre-planned theatrics and hysterical actions of Attorney Jan Soifer – with Attorney Riggs and Attorney Maczka in supporting roles. As attested by the audiotape recording of the deposition (see App. Tr., Petitioner's Audiotape Exhibit 5, at 8 January 1993 hearing, admitted into evidence at p. 88 of Statement of Facts), State attorneys unilaterally aborted the deposition taking and stalked out of the office of Attorney Riggs – after Petitioner Gilleland objected to the attempt of Attorney Soifer to physically tamper with his video-camera.

As shown by Petitioner's "Affidavit of Deposition Taking," (see App. Tr. p. 240 ff), as well as the aforementioned Exhibit 6 audiotape in the appeal record, State attorneys corrupted the oral questioning process, by insisting on making their own oral statements – as if it were a deposition of *their* testimony; secondly, by insisting on *frivolous objections* – without stating any legal authority or basis for the objections; thirdly, by carrying on a *simultaneous dialogue* while Petitioner was speaking and writing down their questions; fourthly, by *not completing their question* when requested by Petitioner Gilleland; and fifthly, by stalking out

of the room although Petitioner Gilleland remained seated and *repeatedly asked for the next question.*

Abuse of Government Power

[Kangaroo Court: "Term descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a forgone conclusion because of the bias of the court or other tribunal." Black's Law Dictionary, 6th Edition, 1990, p. 868]

The first session of kangaroo court took place in the 98th District Court of Judge Meurer on 8 January 1993. As shown by the Statement of Facts for that hearing, filed in the appellate court on 12 May 1993, the case was dismissed and Petitioner Gilleland was sanctioned. Petitioner was fined over $10,000.00 although he *complied* with the subpoena duces tecum, which was based on Rules of Civil Procedure, Rules 200 and 201; *reported* to the venue stated in the subpoena; *attended* the deposition session; *answered* all complete questions presented to him; *repeatedly* asked for the next question; and *remained* in the deposition room even after State attorneys unilaterally aborted the session and departed from the office. Notwithstanding Petitioner's deposition compliance, Judge Meurer stated that: "Most severe sanctions supported and in fact mandated by evidence." Although Petitioner Gilleland voluntarily took the witness-stand and gave sworn testimony, he was found in contempt of court – *three times* – and fined an additional $150.00! (App. Tr. p. 356).

The second session of kangaroo court took place in the 98th District Court of Judge Meurer on 22 January 1993. Petitioner was subpoenaed at 8:20 P.M. the night before – to appear in court the next morning at 9:00 A.M. with all his financial, credit, property, savings and insurance records, as well as all his negotiable instruments and bank statements. (App. Tr. p.410 ff).

The third session of kangaroo court took place in the 98th District Court of Judge Meurer on 16 February 1993, at which time Petitioner Gilleland was fined an additional $500.00 for a non-existent violation of RCP, Rule 13.

The fourth session of kangaroo court took place in the 98th District Court of Judge Meurer on 4 March 1993, at 8:30 A.M. Judge Meurer not only denied Petitioner's exception and motions set *in her court* – she also estopped adjudication of Assistant Attorney General fraud, perjury and deceit, by striking all Petitioner's actions, properly set and noticed *in Judge Dietz's court* for 9:00 A.M. that same morning!

To completely estopp all further actions against the State and its attorneys, the final 5 March 1993 order of Judge Meurer decreed:

> "The Plaintiff is further enjoined from obtaining any settings for additional hearings before the District Courts of Travis County in this case until and unless he obtains a favorable ruling on appeal from an appellate court."

Conclusions

• Although Petitioner Gilleland obeyed the subpoena duces tecum, attended the deposition session at the stated venue, wrote down all questions, and answered the complete questions given to him – Rule 13 sanctions were awarded – and Petitioner was fined over $10,000.00.

• Although Petitioner Gilleland violated no provision of RCP Rule 13, nonetheless, Rule 13 sanctions were ordered against him on 16 February 1993.

• Although Petitioner Gilleland foresaw the events of the deposition taking and attempted to effect corrective action – *before the deposition session* – he was effectively estopped.

• Although Petitioner Gilleland repeatedly objected – orally and in writing – to the kangaroo-court actions of the 98th District Court, Judge Meurer continued to act in conspiracy with State attorneys to deprive Petitioner of his civil rights of due process, trial by jury, fair adjudication, and impartial - unbiased judgment.

• Petitioner Gilleland received trial-by-sanctions, case-dismissal and an excessive-fine for obeying the law – and the merits of his cause of action against State officials were never reached.

REASONS FOR GRANTING THE PETITION

Question I

Did Judge W. Jeanne Meurer abuse her governmental power and discretion in conducting a kangaroo court on 8 January 1993, in conformance with prior *ex parte* communications

with State attorneys, whereby Petitioner Gilleland was denied his U.S. Constitutional 14th Amendment due-process rights, fair trial, and a previously demanded trial by jury?

Writ of Certiorari should be granted because the trial record, the Statement of Facts, and Petitioner's admitted audiotape-exhibit of the deposition session, are in the Third Court of Appeals, and together prove that Petitioner complied with the Texas Rules of Civil Procedure, and especially did not violate Rule 13. It is *prima facie* evidence of the kangaroo-court, for the court to state that Petitioner violated Rule 13 at the deposition taking, when in fact Rule 13 has nothing to do with deposition taking, but rather pertains to the filing of written documents. Petitioner has attached hereto a photocopy of Texas Rules of Civil Procedure, Rule 13, at Appendix F.

Further, the record shows the *ex parte* exchange that took place between a State attorney at the deposition taking, and with Judge Meurer or a person in her office, prior to trial. Further, the Statement of Facts shows that Judge Meurer had factual knowledge about the teeth in Petitioners head and his financial status, prior to the 8 January 1993 trial. Further, the Statement of Facts and the admitted exhibits show that Judge Meurer had social contact with at least one of the State attorneys during the course of the case. Further, Judge Meurer denied Petitioner a jury trial, although he had formally filed a request for same, and paid the required fee.

All of these actions are documented and in the record, and together prove that Judge Meurer violated the due process

rights of Petitioner as provided by the 14th Amendment to the Constitution of the United States. Dismissal of Petitioner's cause as a sanction, without trial on the merits, violates the ruling of this Court in *Societe Internationale v. Rogers*, 357 U.S. 197, 209-10, 78 S.Ct. 1087, 2 L.Ed.2d 1255; and is further authority to rule that Judge Meurer repeatedly violated Petitioner's 14th Amendment right of due process.

Question II

Did Judge W. Jeanne Meurer abuse her governmental power and discretion in the kangaroo court on 8 January 1993, by punishing Petitioner Gilleland with an excessive fine in the form of attorney fees of approximately $11,000 in addition to case dismissal, in violation of his U.S. Constitutional protection under the 8th Amendment?

Writ of Certiorari should be granted because the trial court erred and abused its discretion on 8 January 1993 in awarding attorney fees that are unjustified, punitive, and constitute an *excessive fine*.

The fees are *unjustified* because Petitioner did not violate any provision of RCP Rule 13 or Rule 215. The fees are *punitive*, in that they are stated to be awarded because of Appellant's alleged violation of Rule 13 and Rule 215. The fees constitute an *excessive fine*, because they are exorbitant on their face and significantly disproportionate to the alleged offense.

Unjustified: Respondents presented no evidence to show violations of RCP Rule 13 and Rule 215 by Petitioner. (See

all of 8 January 1993 Statement of Facts). Further, Respondents presented no evidence of bad faith or violation of a court order by Petitioner. The judgment must be based on the case proved and the evidence admitted at trial.

Punitive: the fees are punitive, for the alleged "harassment and hostile behavior of the Plaintiff." (See 8 Jan. '93 S/F, p. 149 - lines 7-9.). The Exhibit-6 audiotape of Petitioner proves those charges to be false. (Hear *all* of Exhibit -6 audiotape). In *United States v. Halper*, 490 U.S. 435, 448 (1989):

> a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term.

Also, *id* at 447-448

> The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law.

Excessive: the fees are excessive because they constitute a fine, significantly disproportionate to the alleged offense. Further, the fees are far above the government litigation rates as shown in Petitioner's Exhibit 2, in the 22 January 1993 hearing (Texas State Bar Lawyer Hourly Rate Report). Further, the fees and charges *of all three* state attorneys were not documented before the court.

It is shown in *Browning-Ferris Industries v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989), that the purpose of the U.S. Eighth Amendment is to limit the power of the government to punish. See *id.* at 266-7, and 275. Also, the

U.S. Eighth Amendment is not limited to criminal proceedings. See *id.* at 294.

Question III

Did the Third Court of Appeals in Austin, Texas deny Petitioner Gilleland U.S. Constitutional due process and a fair appellate review, by acting as an advocate for the Texas governmental respondents, in responding to and rebutting 46 of 68 points of error that were not challenged by respondents themselves?

Writ of Certiorari should be granted because Petitioner's Reply Brief filed in the Third Court of Appeals in Austin, on 1 October 1995, provided that appellate court with a detailed analysis of each and every reply made by Respondents. It was clearly shown to that court that Respondents did not deny or rebut 46 of the 68 points of error set forth by Petitioner. As can be seen by the appellate judgment at Appendix A attached hereto, that court gratuitously proceeded to "fill in the blanks" for governmental Respondents, and provided the arguments that Respondents were not capable of providing for themselves.

In specific, the Third Court of Appeals judgment attached hereto at Appendix A, provides a ready and gibe answer to all of Petitioner's points of error. Yet, Respondents did not challenge or answer the following 46 error points: 2, 5, 6, 9, 10, 11, 15, 17, 18, 19, 20, 21, 22, 23, 26, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56, 57, 59, 61, 62, 64, 67, and 68.

Accordingly, Petitioner hereby shows that the Third Court of Appeals in Austin has ceased to be an "appellate" court guided by law, but rather is now functioning as an "advocate" court, at least in respect to cases that are brought by private citizens against corrupt governmental officials. This bias by the appellate court against Petitioner Gilleland is so strong that his due process right under the 14th Amendment of the U.S. Constitution has been denied.

Question IV

Did the Third Court of Appeals in Austin, Texas, deny Petitioner Gilleland U.S. Constitutional 14th Amendment due-process rights, and a fair appellate review, by reviewing his request for a rehearing with only one appellate justice, in violation of Texas Rules of Appellate Procedure, Rule 19 (f)?

Writ of Certiorari should be granted because Appendix E, attached hereto, provides a photocopy of the "Order on Motion" upon which this question is based. At the bottom of the page, the rule itself is quoted in full. The order itself clearly shows that only one justice was involved in Petitioner's motion for rehearing.

Petitioner claims that the foregoing is a denial of full appellate review as provided by law, and therefore violates Petitioner's right of due process contained in the U.S. Constitution, under the 14th Amendment.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Petitioner Ellis H. Gilleland
P.O. Box 9001
Austin, Texas 78766

25 March 1996

APPENDICES

APPENDIX A

IN THE COURT OF APPEALS
THIRD DISTRICT OF TEXAS, AT AUSTIN

JUDGMENT RENDERED JANUARY 18, 1995

NO. 3-93-162-CV

ELLIS H. GILLELAND vs. LARRY M. DUBUISSON;
OLIVIA R. EUDALY; ALTON F. HOPKINS, JR.;
MIKE LEVI; ROBERT D. LEWIS; MARY E. MAINSTER;
GUY A. SHEPPARD; FRED K. SOIFER;
CLARK S. WILLINGHAM

APPEAL FROM 200TH DISTRICT COURT
OF TRAVIS COUNTY

BEFORE JUSTICES POWERS, ABOUSSIE AND
B. A. SMITH

AFFIRMED – PER CURIAM OPINION

THIS CAUSE came on to be heard on the transcript of the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the trial court's judgment: IT IS THEREFORE considered, adjudged and ordered that the judgment of the trial court be and is hereby in all things affirmed. It is FURTHER ordered that the appellant, Ellis H. Gilleland, pay all costs relating to this appeal, both in this Court and the court below; and that the cash deposit made in the trial court in lieu of an appeal bond be subject to and used for the payment of such costs; and that this decision be certified below for observance.

IN THE COURT OF APPEALS
THIRD DISTRICT OF TEXAS, AT AUSTIN

No: 3-93-162-CV

ELLIS H. GILLELAND,
Appellant

vs.

LARRY M. DUBUISSON, ET AL.,[1]
Appellees

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 200TH JUDICIAL DISTRICT

No. 92-08290, HONORABLE W. JEANNE MEURER, JUDGE PRESIDING

PER CURIAM

This appeal arises from a sanction order that, among other things, struck the pleadings of appellant Ellis Gilleland. Tex. R. Civ. P. 13, 215. Gilleland, a *pro se* litigant, raises sixty-eight points of error on appeal, many of which he briefs in an offensive tone. This Court would ordinarily strike such a brief, but to avoid further delay, we will attempt to look to the substance of the arguments Gilleland makes. We will affirm the court's order assessing sanctions, but hold that two orders the trial court signed after it lost jurisdiction are void.

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[1] The remaining appellees are Olivia R. Eudaly; Alton F. Hopkins, Jr.; Mike Levi; Robert D. Lewis; Mary E. Mainster; Guy A. Sheppard; Fred K. Soifer, and Clark S. Willingham.

BACKGROUND

Gilleland filed the underlying lawsuit against appellees Larry M. Dubuisson; Olivia R. Eudaly; Alton F. Hopkins, Jr.; Mike Levi; Robert D. Lewis; Mary E. Mainster; Guy A. Sheppard; Pred K. Soifer; and Clark S. Willingham, in their individual and official capacities. Appellees, whom we will refer to collectively as Dubuisson, were members of the Texas State Board of Veterinary Medical Examiners. Gilleland alleged that Dubuisson violated the Veterinary Licensing Act by dismissing complaints to the Board by less than a quorum and by failing to provide accurate consumer-complaint information. The Veterinary Licensing Act, 67th Leg., R.S., ch. 761, § 1, 1981 Tex. Gen. Laws 2816, 2817 (Tex. Rev. Civ. Stat. Ann. art. 8890, § 5 (g), since amended); 70th Leg., R.S., ch. 1122, § 19, 1987 Tex. Gen. Laws 3850, 3850-51 (Tex. Rev. Civ. Stat. Ann. art. 8890, § 18A, since amended).

Disputes arose almost immediately after Gilleland filed suit and continued throughout Dubuisson's effort to obtain discovery from Gilleland. After an unsuccessful attempt to depose Gilleland, Dubuisson requested sanctions against Gilleland for filing frivolous and groundless motions and for abusing the discovery process. Tex. R. Civ. P. 13, 215. Following a hearing, the trial court rendered judgment striking Gilleland's pleadings, dismissing his cause with prejudice, assessing attorney's fees of $10,354.90, and sanctioning him $150.00 for conduct during the sanction hearing. The court suspended payment of the $150.00 contingent on Gilleland's performing the remainder of the order.

ABUSE OF DISCRETION IN IMPOSING SANCTIONS

In points of error five and six, Gilleland contends that in striking his pleadings the trial court abused its discretion in two respects: the sanction imposed is not just and it violates his right to due process. See *GTE Communications Sys. Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993); *Transamerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991). The trial court's discretion in assessing sanctions under Rules 13 and 215 is circumscribed by the requirements that the sanction be just and that it not offend due process. *Tanner*, 856 S.W.2d at 731; *Transamerican*, 811 S.W.2d at 917. To be just, a sanction must (1) relate directly to the offensive conduct and (2) be proportionate to the conduct. *Transamerican*, 811 S.W.2d at 917; *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992). While the due process concerns under Rules 13 and 215 are not identical, a sanction under either rule that adjudicates the merits of a party's claim satisfies due process only if the sanctioned party's conduct justifies a presumption that his claim lacks merit. *Tanner*, 856 S.W.2d at 731; *Transamerican*, 811 S.W.2d at 917-18.

To determine whether the trial court exercised its discretion within these limits in imposing sanctions for abuse of discovery, we independently review the entire record. *United States Fidelity & Guar. Co. v. Rossa*, 830 S.W.2d 668, 672 (Tex. App.—Waco 1992, writ denied). We presume that the trial court considered the full record of the case, up to and including the hearing on the sanction motion. *Downer v.*

Aquamarine Operators, Inc., 701 S.W.2d 238, 241 (Tex. 1985), cert. denied, 476 U.S. 1159 (1986); see *Eason v. Eason*, 860 S.W.2d 187, 189 (Tex. App.—Houston [14th Dist.] 1993, no writ). The full record includes the evidence, arguments of counsel, and all orders and documents before the trial court. *Jefa Co. v. Mustang Tractor & Equip. Co.*, 868 S.W.2d 905, 910 (Tex. App.—Houston [1st Dist.] 1994, writ denied). On appeal, Gilleland must present a record that demonstrates an abuse of discretion. Tex. R. App. P. 50(d), 53(k); *Eason*, 860 S.W.2d at 190.

Gilleland has not brought forward a complete record on appeal. Although he has presented the transcription of the sanction hearing, along with his six exhibits that were admitted in evidence, Gilleland has failed to see that any of Dubuisson's six exhibits admitted in evidence were also brought forward. In addition, Gilleland has presented no transcription from a hearing held before the sanction hearing on his motion to disqualify one of Dubuisson's attorneys. We presume that the omitted portions of the record support the challenged ruling. *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990); *Thomas v. Walker*, 860 S.W.2d 579, 581 (Tex.App.—Waco 1993, orig. proceeding), *University of Tex. v. Hinson*, 822 S.W.2d 197, 202 (Tex. App.—Austin 1991, no writ). In the absence of a complete record, therefore, Gilleland cannot establish on appeal that the trial court abused its discretion in assessing sanctions under Rule 215. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); *Eason*, 860 S.W.2d at 190.

The record before us does, however, show the following sequence of events. After Gilleland filed su Dubuisson served him with a notice of intent to take oral deposition and a subpoena duces tecum. Gilleland moved to quash both documents, alleging that the action had not yet commenced and that the documents showed an intent to harass him and threaten his physical safety. Gilleland charged in his motions that one of Dubuisson's attorneys intended to lure him into her office for the deposition, from which premises he could be arrested and jailed. Gilleland labelled this attorney as "paranoid, a savage man-hater," with "an obvious vendetta" against him, and on this basis requested a neutral location at which he could be deposed. Gilleland further stated that the same attorney had corrupted the official court reporter in another of his lawsuits and had caused the statement of facts to be redacted. Alleging that the attorney could easily pressure the court reporter in this cause into producing a corrupt recording, Gilleland sought a deposition on written questions and objected to any recording being made by the official court reporter for the Texas State Board of Veterinary Medical Examiners.

After the trial court denied Gilleland's motions to quash, he moved for a discovery protective order, which incorporated his previous motions and alleged grounds that were identical to the grounds of his previous motions. Gilleland claimed that the trial court's ruling on his earlier motions did not address his claims for protection from corrupt deposition taking, corrupt deposition recording, and a location at which he

would be harassed and physically threatened. In denying Gilleland's motion for protective order, the trial court found the motion to be unmeritorious and frivolous.

Between the time Gilleland filed his motion for discovery protective order and the time the court heard it, Dubuisson attempted to depose Gilleland. Gilleland did not produce the items mentioned in the subpoena dues tecum at the deposition and maintains that he was not obliged to produce them because no attorney at the deposition requested them from him. At the outset of the deposition, Gilleland refused to discuss stipulations or to allow Dubuisson's attorneys to make appearances, statements for the record, or objections; instead, he interrupted and repeatedly talked over them in a belligerent tone, demanding the next question. Gilleland threatened to seek sanctions against the attorneys for trying to object, and he asserted that, because it was his deposition, only he was allowed to make statements. Despite the trial court's denying his request for a deposition on written questions, Gilleland insisted on writing out each question and reading his written answer. Gilleland again accused one of Dubuisson's attorneys of being a liar and perjurer who had threatened his physical safety and "corrupted" an official statement of facts, presumably, as he had alleged previously, by causing it to be fraudulently redacted.

When Dubuisson's attorneys informed him that the deposition would continue at the county courthouse, Gilleland spoke simultaneously in an effort to obscure their words. Gilleland further refused to take a phone call from the district

judge's office, through whom the attorneys had arranged to continue the deposition under a district judge's supervision. Although the attorneys clearly announced their intent to reconvene the deposition at the district judge's office, Gilleland chose to consider the deposition terminated by the attorneys. Gilleland spoke in a threatening and abusive tone during the deposition and, at one point, caused one attorney to fear for her physical safety.

After the unsuccessful deposition, Gilleland objected to the transcription of the deposition and filed an "Affidavit of Fraudulent Deposition Record." Gilleland charged that the pages of the transcription which recorded the appearances and statements of Dubuisson's attorneys, after they reconvened the deposition at the district judge's office, made the transcription fraudulent.

At the hearing on Dubuisson's sanction motion, Gilleland asserted that, as he had predicted, the taking of the deposition was corrupted, the transcription was corrupted, and the location of the deposition proved to be physically threatening. During the course of the hearing, the trial court repeatedly warned Gilleland against interrupting, arguing, harassing other parties, and making comments that demeaned the court. The court assessed three fifty-dollar fines against Gilleland for arguing, engaging in accusatory conduct, and making an inappropriate outburst. After the last fine, the court summoned a deputy sheriff to the courtroom.

We find no abuse of discretion in striking Gilleland's pleadings for abusing the discovery process. Because

Gilleland has not shown that the trial court erred under Rule 215, we overrule points five and six.

OTHER COMPLAINTS REQUIRING REFERENCE TO THE EVIDENCE.

Gilleland asserts in the following points of error that no evidence supports either the findings of the trial court or the judgment: four, eleven, twelve, fifteen, seventeen through twenty, twenty-two, twenty-nine, thirty-one, thirty-five, thirty-eight through forty-two, forty-four, and fifty-five. Gilleland also brings the following points of error that either allege an abuse of discretion, in effect raise evidentiary challenges, or require an evaluation of the evidence from the sanction hearing to resolve: eight, fourteen, sixteen, thirty-two, thirty-four, thirty-six, thirty-seven, forty-three, forty-five, forty-nine through fifty-three, fifty-six, fifty-seven, sixty, and parts of points nine and fifty-four. Gilleland contends in point twenty-six that Dubuisson never alleged at the sanction hearing that Gilleland's motions were frivolous and groundless.

As previously discussed, Gilleland has provided an incomplete statement of facts from the sanction hearing. Tex. R. Civ. P, 50(d), 53(k). With only a partial statement of facts before us, we must presume that the evidence supports the trial court's findings and its judgment. *Prezelski*, 782 S.W.2d at 843; *Murray v. Devco Ltd.*, 731 S.W.2d 555, 557 (Tex. 1987); *Englander Co. v. Kennedy*, 428 S.W.2d 806, 806 (Tex. 1968). Concerning point twenty-six, even if Dubuisson did not allege at the sanction hearing that Gilleland's motions

to quash were frivolous, we presume that the trial court considered the entire history of the case when it assessed sanctions. *Downer*, 701 S.W.2d at 241; *Rossa*, 830 S.W.2d at 672. We therefore overrule the points enumerated above, including that part of points nine and fifty-four requiring an evaluation of the evidence.

RIGHT TO JURY TRIAL ON SANCTIONS

In points of error two, twenty-one, and forty-eight, Gilleland argues that, by hearing and determining Dubuisson's sanction motion without a jury, the trial court denied his due-process right to a jury trial. Gilleland relies in his brief on article one, sections fifteen and nineteen of the Texas Constitution; the fourteenth amendment to the United States Constitution; and *Societe Internationale v. Rogers*, 357 U.S. 197, 209-10 (1958). We do not find in the record, nor has Gilleland shown us, any contention he made to the trial court that the non-jury hearing violated the right to jury trial specifically granted under article one, section fifteen of the Texas Constitution, or under *Societe Internationale*. Gilleland has therefore waived these contentions on appeal. Tex. R. App. P. 52(a).

Having waived his direct claim to a jury trial under the Texas Constitution, Gilleland is forced to argue that his right to a jury trial resides.in the notion of federal or state due process. The requirements of federal and state due process include notice calculated to afford a party a fair opportunity to appear and defend his interests and a reasonable opportunity to be heard on the merits of his case, with the right to introduce evidence and obtain a judicial finding based on that

evidence. *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813-14 (Tex. 1983); *MJR Fin., Inc. v. Marshall*, 840 S.W.2d 5, 10 (Tex. App.—Dallas 1992, no writ).

Gilleland cites no authority, and we find none, that the right to due course of law under the Texas Constitution encompasses the right to a jury trial at a sanction hearing. The Texas Rules of Civil Procedure clearly give the trial court authority to assess sanctions for filing groundless pleadings and for abusing discovery. Tex. R. Civ. P. 13, 215. Trial without a jury in pursuance of the law and practice of the state is not incompatible with due process of law guaranteed by the fourteenth amendment of the United States Constitution. *Wooten v. Dallas Hunting and Fishing Club, Inc.*, 427 S.W.2d 344, 346 (Tex. Civ. App.—Dallas 1968, no writ). On the ground that due process does not mandate a jury trial at a sanction hearing, we reject Gilleland's claim in point twenty-one that Dubuisson presented no evidence that Gilleland was not entitled to a jury trial. Because neither the federal nor state guarantee of due process mandates a jury trial in this case, we also overrule points two and forty-eight.

ACTIONS TAKEN BEYOND THE TRIAL COURT'S JURISDICTION

In points of error forty-six and forty-seven, Gilleland complains of post-judgment orders, that the trial court signed on March 4 and March 5, 1993. In the order signed March 4, the trial court struck as a Rule-13 sanction Gilleland's "Objection to Decision on Plaintiff's Motions To Quash" and

"Motion To Suppress Fraudulent Deposition Transcript Prepared by C.S.R. Linda Cameron" and ordered Gilleland to pay $500.00 in attorney's fees. In the order signed March 5, the count overruled Gilleland's objection to the March 4 order, struck all other motions that Gilleland had filed, and enjoined Gilleland from filing any further motions in the case. As to the March 4 order, the transcript contains only the last page of an order that is signed on March 4 and bears no file-mark. Gilleland relies on a signed, but not file-marked, copy of the order attached to his objection to the order. Although we do not believe that Gilleland has presented a sufficient record showing error in the March 4 order, in the absence of any complaint from Dubuisson we will refer to the copy attached to Gilleland's objection.

We consider on our own motion the trial court's jurisdiction to sign the two orders. After the trial court signed the judgment on January 14, 1993, Gilleland filed a motion objecting to it. Because the trial court did not rule on this motion, the court retained plenary power over its judgment for 105 days or until April 29, 1993. Tex. R. Civ. P. 329b (e), (g). Gilleland, however, perfected his appeal to this Court on January 19, 1993.[2] Once the appeal was perfected, this Court acquired exclusive jurisdiction over the appeal subject only to

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[2] On January 19, Gilleland filed a "Notice of Appeal." Although Gilleland, a private litigant, is not authorized to perfect appeal by notice of appeal, his notice constituted a bona fide attempt to invoke this court's jurisdiction. *Linwood v. NCNB Texas*, 885 S.W.2d 102, 103 (Tex. 1994). Gilleland corrected the error by depositing cash in lieu of bond on February 1, 1993.

the trial court's power, until April 29, to modify its judgment or grant a new trial. Tex. R. Civ. P. 329b (e); *Robertson v. Ranger Ins. Co.*, 689 S.W.2d 209, 210 (Tex. 1985); *Crawford v. Kelly Field Nat'l Bank*, 724 S.W.2d 899, 900 (Tex. App.—San Antonio 1987, no writ); *Stein v. Frank*, 575 S.W.2d 399, 400 (Tex. Civ. App.—Dallas 1978, no writ).

The motions that led to the court's orders, including Gilleland's "Objection to Decision on Plaintiff's Motions To Quash" and "Motion To Suppress Fraudulent Deposition Transcript Prepared by C.S.R. Linda Cameron," and Dubuisson's responsive motions to strike and to impose sanctions, are ancillary to the trial court's judgment. Although the purpose of the orders signed March 4 and 5 was to stop Gilleland from filing the numerous postjudgment motions he continued to file, the trial court's power to modify its judgment did not extend to rendering orders on these ancillary matters. *First State Bank & Trust Co. v. Vector Corp.*, 427 S.W.2d 958, 960 (Tex. Civ. App.—Waco 1968, writ ref'd n.r.e.); *Littlejohn v. Carroll*, 342 S.W.2d 622, 623 (Tex. Civ. App.—Waco 1961, no writ). Cf. *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982) (discussing trial court's continuing jurisdiction to enforce its judgment). Once Gilleland perfected his appeal, the trial court lost the authority even to file Gilleland's ancillary motions. *Littlejohn*, 342 S.W.2d at 623. We therefore do not address the merits of points forty-six and forty-seven. We hold that the trial court lacked jurisdiction to sign the March 4 and 5 orders, including

the order that Gilleland pay $500.00 in attorney's fees, and that the orders are consequently void.

In points of error fifty-eight, fifty-nine, and sixty-three, Gilleland complains of various actions the trial court took at hearings on February 16 and March 4, 1993. Each act complained of occurred at hearings the trial court held after it had lost jurisdiction of the case. For the reasons discussed-above, we do not address the merits of points fifty-eight, fifty-nine, and sixty-three.[3] We hold on our own motion that the actions Gilleland complains of at the hearings on February 16 and March 4 were taken beyond the court's jurisdiction and were void.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In point of error seven, Gilleland argues that the trial court erred in not filing findings of fact and conclusions of law after hearings held January 8, February 16, and March 4, 1993. On January 8, the trial court heard the sanction motion that led to the judgment; on February 16, the court heard Dubuisson's "Motion To Strike and for Rule 13 Sanctions; and on March 4, the court heard Gilleland's "Exception to Decision of Judge Meurer and Motion for Rehearing and Submission of Evidence."

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3 We note, however, that in signing its judgment on January 14, 1993, the trial court implicitly disposed of all pending prejudgment motions. *Miller Brewing Co. v. Villarreal*, 822 S.W.2d 177, 180 (Tex. App.—San Antonio 1991), *rev'd on other grounds*, 829 S.W.2d 770 (Tex. 1992). And again, once Gilleland perfected his appeal to this Court, the trial court lost the authority to file ancillary motions. *Littlejohn*, 342 S.W.2d at 623.

We first consider the absence of findings related to the January 8 sanction hearing. The trial court struck Gilleland's pleadings and assessed attorney's fees based on Rules 13 and 215 of the Texas Rules of Civil Procedure. After the trial court signed the sanction order, Gilleland requested findings of fact and filed a notice of past due findings within the time required by Rules 296 and 297. Tex. R. Civ. P. 296, 297. Rule 13 requires the particulars of good cause for imposing sanctions to be stated in the sanction order. This requirement is mandatory and replaces the traditional findings of fact and conclusions of law that normally are filed after a nonjury trial on the merits. *GTE Communications Sys. Corp.v. Curry*, 819 S.W.2d 652, 654 (Tex. App.—San Antonio 1991, orig. proceeding).

The trial court here recited in the sanction order its findings of good cause to strike Gilleland's pleadings and assess attorney's fees. Because these fact findings are meant to replace traditional findings of fact, the trial court had no duty to file separate findings pursuant to Rule 296. See generally *Cooks v. City of Gladewater*, 808 S.W.2d 710, 714 (Tex. App.—Tyler 1991, no writ) (rules 296 through 299 do not apply to venue hearings; rules specifically applicable to venue hearings govern). To the extent that the sanction order is based on Rule 13, therefore, the court did not err in refusing to file separate findings of fact and conclusions of law.

To the extent that the sanction order is based on Rule 215, we likewise determine that the court did not err in refusing to

file findings. Although the supreme court has stated that findings may help in reviewing sanctions, it has expressly declined to require trial courts to make written findings when discovery sanctions are imposed. *Chrysler Corp.*, 841 S.W.2d at 852; *Transamerican*, 811 S.W.2d at 919 n.9. We therefore find no error in the trial court's refusal to file findings after it granted Dubuisson's sanction motion.

The hearings held February 16 and March 4 occurred after the trial court had lost jurisdiction of the cause. Because any action the trial court took at these hearings is void, its failure to file findings of fact is moot. We overrule point seven.

MISCELLANEOUS POINTS OF ERROR

In his first point of error, Gilleland complains that the trial court refused to let him present evidence during a hearing on January 4, 1993. Assuming that we can review this claim in light of the incomplete statement of facts, Gilleland failed to object during the hearing to the exclusion of evidence, obtain a ruling from the trial court, and make an offer of proof. Tex. R. App. P. 52; Tex. R. Civ. Evid. 103. Because Gilleland has waived this claim for review, we overrule point one.

In points of error ten, thirteen, and the remainder of points nine and fifty-four, Gilleland contends that the trial court erred in awarding Dubuisson attorney's fees as a sanction. Gilleland argues in points nine, ten, and fifty-four that he had no notice that the trial court would hear Dubuisson's request for attorney's fees at the sanction hearing. Gilleland argues in point thirteen that in the absence of any plea that attorney's fees be paid to the office of the Attorney General, the court

erred in ordering them so paid. Gilleland has failed to see that the transcript contains Dubuisson's motion for sanctions. His first exhibit to the statement of facts from the sanction hearing, however, is a copy of the motion, without a file-mark. Dubuisson offered no objection to admitting this exhibit, on the assumption that it was an accurate copy of the motion. Although Gilleland has technically failed to present a sufficient record for review, we will refer to the copy of the motion admitted in evidence. See *Petitt v. Laware*, 715 S.W.2d 688, 690 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.).

In the sanction motion, Dubuisson expressly requests attorney's fees incurred in preparing for and attending the aborted deposition, preparing for and attending hearings on Gilleland's motions to quash and motion for protective order, and preparing the sanction motion. The motion also notifies all parties that a hearing was set for January 8, 1993. The attached certificate of service recites that Dubuisson served Gilleland with the motion on December 31, 1992. The motion therefore shows that Dubuisson notified Gilleland that he would seek attorney's fees as a sanction and that a setting had been obtained. It also shows that Gilleland received the required three day notice of the setting. Tex. R. Civ. P. 21; see Tex. R. Civ. P 215 (1) (b).

Although Gilleland filed motions alleging that he had insufficient time to prepare a defense to Dubuisson's sanction motion, he requested the trial court to strike the sanction motion and to strike the nonjury setting in favor of a jury setting rather than to continue the hearing. Because Gilleland

did not request a continuance, we determine that the court correctly refused to strike the motion and to strike the nonjury setting in order to give Gilleland more time to prepare.

The sanction motion does not request that attorney's fees be payable to the Office of the Attorney General. The court appears to have ordered that only those fees incurred by the assistant attorney general, one of the attorneys representing Dubuisson, be payable to the Office of the Attorney General. Ordering this method of payment without advance notice, if error, could not have harmed Gilleland. We therefore overrule points ten, thirteen, and that part of points nine and fifty-four dealing with lack of notice.

In point of error three, Gilleland argues that the trial court erroneously denied his motions to quash the taking of oral deposition and subpoena duces tecum. Gilleland asserts that at the hearing on his motions, the trial court did not consider his requests for a neutral location, a neutral court reporter, and a deposition on written questions. Even if Gilleland were correct in this assertion, the orders recite that the trial court fully considered each motion. We presume that the trial court read and considered each motion before rendering a decision on it. We overrule point three.

Gilleland claims in his twenty-third point of error that the trial court abused its discretion because he did not file a motion to quash the notice of intent to take oral deposition and subpoena duces tecum. Gilleland apparently objects to the court's considering his document a "motion." The title of Gilleland's requests to quash reads, "Affidavit—Motion To

Quash Subpoena Duces Tecum and Motion To Quash Taking of Oral Deposition." Because Gilleland requested the court to take action on his behalf in this document, the trial court did not err in referring to it as a motion. We overrule point twenty-three.

In points of error twenty-four, twenty-five, twenty-seven, twenty-eight, and thirty, Gilleland alleges that the trial court committed legal error in making two of the findings recited in the judgment. We do not find in the record, nor has Gilleland shown us,. any place that Gilleland presented his contentions to the trial court. Because Gilleland cannot raise these points for the first time on appeal, we overrule points twenty-four, twenty-five, twenty-seven, twenty-eight, and thirty. Tex. R. App. P. 52(a); *Aero Energy, Inc. v. Circle C Drilling Co.*, 699 S.W.2d 821, 822 (Tex. 1985); *City of Austin v. Daniels*, 335 S.W.2d 753, 758-59 (Tex. 1960).

In point of error thirty-three, Gilleland claims that the trial court erred in finding that at the deposition Gilleland wrongfully refused to allow Dubuisson's attorneys to make appearances, state objections, or ask questions without interruptions and instructions from Gilleland. Gilleland argues that the deposition was held pursuant to Dubuisson's subpoena duces tecum, which stated that Texas Rules of Civil Procedure 200 and 201 would govern the deposition. Gilleland points out that neither of these rules authorizes appearances, objections, or questions.

We first note that the only copy of the subpoena duces tecum in the transcript is one without a file-mark and

apparently attached to Gilleland's motion to quash the subpoena. Assuming that this copy is sufficient to present error, the attachment to the subpoena merely states that Gilleland is "notified, pursuant to Rules 200 and 201" that Dubuisson intends to take his deposition. The subpoena does not limit the deposition to the operation of Rules 200 and 201. Rule of civil procedure 204 expressly allows attorneys to make objections during a deposition. And allowing attorneys to state appearances for the record and to ask questions of the deponent without interruption, although no rule expressly permits it, is part of maintaining an orderly deposition. Because the trial court did not err in making the challenged finding, we overrule point thirty-three.

In points sixty-one and sixty-two, Gilleland complains of a statement the trial court made and of an exhibit introduced at a hearing held January 22, 1993. On that date, the court heard Gilleland's "Motion To Reduce Supersedeas Bond."[4] Gilleland alleges that the statement and exhibit evidence a prior conspiracy between the court and state attorneys. Having reviewed the statement and exhibit, we reject as without merit any claim that either shows a conspiracy. We overrule points sixty-one and sixty-two.

In points of error sixty-four through sixty-eight, Gilleland contends that the judge who rendered the sanction order erred in failing to disqualify herself even though her impartiality

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[4] Although this hearing occurred after Gilleland had perfected his appeal, the trial court has continuing jurisdiction during the pendency of an appeal to order the amount and type of security for suspending the enforcement of a judgment. Tex. R. App. P. 47(k).

could reasonably be questioned. Gilleland first complained that the trial judge was biased against him after the trial court signed the judgment, in a motion objecting to the judgment and requesting a new trial. Texas Rule of Civil Procedure 18a sets out the procedural requirements for recusal, which include filing a verified motion to recuse at least ten days before the date set for the hearing. Assuming that Gilleland can justify the untimeliness of his complaint, he never asked in his motion that the judge be recused. Gilleland has therefore waived any error concerning the court's impartiality. Tex. R. App. P. 52(a). We overrule points sixty-four through sixty-eight.

CONCLUSION

We determine that the orders the trial court signed on March 4 and 5, 1993, are void because the trial court no longer had jurisdiction to sign them. We also determine that any action the trial court took at hearings on February 16 and March 4, 1993, is void as beyond the court's jurisdiction. Having considered each of Gilleland's remaining allegations of error, we affirm the trial court's sanction order striking Gilleland's pleadings, ordering Gilleland to pay attorney's fees of $10,354.90, and conditionally assessing him $150.00.

Before Justices Powers, Aboussie and B. A. Smith
Affirmed
Filed: January 18, 1995
Do Not Publish

APPENDIX B

[Filed 14 January 1993]

No. 92-08290

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
200TH JUDICIAL DISTRICT

ELLIS H. GILLELAND
Petitioner,

v.

LARRY M. DUBUISSON,
OLIVIA R. EUDALY,
ALTON F. HOPKINS, JR.,
MIKE LEVI,
ROBERT D. LEWIS,
MARY E. MAINSTER,
GUY A. SHEPPARD
FRED K. SOIFER,
CLARK S. WILLINGHAM,
individually, jointly as members of
the Texas State Board of Veterinary
Medical Examiners, and severally,
Respondents

ORDER GRANTING DEFENDANT'S
MOTION FOR SANCTIONS
AND DISMISSING CASE WITH PREJUDICE

BE IT REMEMBERED that on the 8th day of January 1993 came on to be heard DEFENDANTS' MOTION FOR SANCTIONS AND/OR MOTION TO COMPEL CONTINUATION OF DEPOSITION UNDER COURT

SUPERVISION and PLAINTIFF'S MOTION TO STRIKE AND PLAINTIFF'S MOTION FOR DECISION ON PLAINTIFF'S REQUEST FOR JURY TRIAL. The Defendants appeared through their attorneys of record. The Plaintiff, who has no attorney of record, appeared *pro se*. The Court, having considered the motion, the arguments of counsel, the evidence presented, and the possible alternative remedies to imposing sanctions, finds Plaintiff's motions lack merit and should be denied but that there is good cause to grant Defendants' Motion for Sanctions and that no lesser remedy than striking Plaintiff's pleadings, dismissing the case with prejudice, and requiring the payment of attorneys' fees will grant the relief to which Defendants are entitled.

In specific, the Court finds the following good cause to impose sanctions:

(1) The allegations made in Plaintiff's motions are false and wholly unsupported by fact or law; that Plaintiff is not entitled to a jury trial on Defendants' Motion for Sanctions and that the actions of Defendants' counsel were entirely proper;

(2) That, based on the discovery documents filed in this cause of action, of which the Court takes judicial notice, Defendants filed and served on Plaintiff a Notice of Intent to Take Oral Deposition Duces Tecum in response to which the Plaintiff filed motions to quash;

(3) That Plaintiff made frivolous and groundless objections to the deposition notice and subpoena duces tecum;

(4) That Defendants were forced to defend those objections by preparing for and appearing at hearings on December 22, 1992, and January 4, 1993, at which hearings the objections were overruled;

(5) That Plaintiff appeared for his deposition on December 29, 1992, but engaged in abusive, uncooperative, threatening behavior and wrongfully refused to allow the attorneys present to make appearances, to state their objections on the record, or to ask questions without interruptions and instructions from Plaintiff;

(6) That when Plaintiff appeared for his deposition on December 29, 1992, he failed to produce any documents in response to the Subpoena Duces Tecum served on him with the Notice of Deposition;

(7) That counsel for one of the Defendants repeatedly advised Plaintiff on the record at his deposition on December 29, 1992, that Defendants would recess the deposition and reconvene at the Travis County District Judges' office to seek immediate relief from the Court for Plaintiff's behavior but that Plaintiff failed and refused to appear at the courthouse despite having requested himself a "neutral" forum for the deposition;

(8) That the limited deposition "testimony" given by Plaintiff was evasive and constituted a failure to answer questions propounded and that Plaintiff engaged in behavior, during the deposition, towards the court reporter and counsel for Defendants, that was obstructionist, offensive, threatening,

harassing and abusive;

(9) That the nature of Plaintiff's objections and Plaintiff's actions in this matter, which objections and actions are on the record of the January 4, 1993, hearing, are unreasonable as a matter of law, and indicate that Plaintiff is abusing the discovery process;

(10) That Plaintiff's demeanor in court on the day Defendants' motion was heard was uncooperative .and abusive and supported Defendants' contentions that Plaintiff was.abusing the judicial system and that his actions were made for the purpose of harassment or other improper purposes; and

(11) That the evidence presented at the hearing on January 8, 1993, provided other good cause to conclude that Plaintiff's abuse of the judicial system and of the discovery process warrants the imposition of the most severe sanctions available to the Court under the Texas Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Plaintiff's pleadings in this cause are hereby stricken as a sanction under Texas Rules of Civil Procedure 13 and 215 .and that this action is dismissed with prejudice.

IT IS FURTHER ORDERED that Plaintiff (1) pay to the Office of the Attorney General the amount of $4,250.00, (2) pay to Defendant Soifer, payable to the order of Jan Soifer, the amount $3,367.40, and (3) pay to Defendants Lewis and Levi, payable to the order of Jennifer S. Riggs, the amount of $2,737.50, each payment to be in the form of a money order or cashier's check to be delivered to the offices of the Travis

County District Judges on the third floor of the Travis County Courthouse, by Friday, January 15, 1993, by 5:00 p.m.

IT IS FURTHER ORDERED that the Plaintiff is sanctioned $150.00 for his abusive and harassing conduct during the hearing of January 8, 1993, but said sanctions are suspended conditioned upon the Plaintiff's compliance with the remainder of this order.

COSTS of court are hereby assessed against Plaintiff for which let writ of execution issue if not timely paid.

SIGNED this 14th day of January 1993.

/s/
The Honorable W. Jeanne Meurer
Judge Presiding

APPROVED AS TO FORM AND SUBSTANCE:

OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS

(No signature)

CHRISTOPHER MACZKA
Assistant Attorney General
Administrative Law Section
State Bar No. 12788250
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/s/
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RUBINSTEIN & PERRY, LLP

/s/ Signed by Attorney Jennifer Riggs
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111 Congress Avenue, Suite 1700
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(512) 404-6550 FAX

CO-COUNSEL FOR DEFENDANT SOIFER

APPROVED AS TO FORM ONLY:

(No signature)

Ellis H. Gilleland
8508 Bradford
Austin, Texas 78758

APPENDIX C

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512) 463-1312

September 21, 1995

Mr. Christopher Maczka
Office of the Attorney General of Texas
Dan Morales, A.G.
P. O. Box 12548 Capitol Station
Austin, TX 78711-2548

Ms. Jennifer Gilchrist
Assistant Attorney General
General Counsel Division
P. O. Box 12548
Austin, TX 78711-2548

Re: Case Number 95-0344

Style: ELLIS H. GILLELAND v. LARRY M. DUBUISSON, OLIVIA R. EUDALY, ALTON F. HOPKINS, JR.,MIKE LEVI, ROBERT D. LEWIS,MARY E. MAINSTER,GUY A. SHEPPARD, FRED K. SOIFER, CLARK S. WILLINGHAM, individually, jointly as members of the Texas State Board of Veterinary Medical Examiners, and severally, Respondents

Dear Counsel:

The application for writ of error in the above-styled case was this day denied with the notation, Writ Denied.

Petitioner's motion to strike respondents' brief is overruled.

Sincerely,

John T. Adams, Clerk

by /s/
Courtland Crocker
Deputy

cc: Ellis H. Gilleland

APPENDIX D

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512) 463-1312

October 27, 1995

Mr. Christopher Maczk
Office of the Attorney General of Texas
Dan Morales, A.G.
P. O. Box 12548 Capitol Station
Austin, TX 78711-2548

Ms. Jennifer Gilchrist
Assistant Attorney General
General Counsel Division
P. O. Box 12548
Austin, TX 78711-2548

Re: Case Number 95-0344

Style: ELLIS H. GILLELAND v. LARRY M. DUBUISSON, OLIVIA R. EUDALY, ALTON F. HOPKINS, JR.,MIKE LEVI, ROBERT D. LEWIS,MARY E. MAINSTER,GUY A. SHEPPARD, FRED K. SOIFER, CLARK S. WILLINGHAM, individually, jointly as members of the Texas State Board of Veterinary Medical Examiners, and severally, Respondents

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,

JOHN T. ADAMS, CLERK

by: /s/
Michael C. Murphy, Deputy Clerk

cc: Ellis H. Gilleland

APPENDIX E

COURT OF APPEALS FOR THE
THIRD DISTRICT OF TEXAS AT AUSTIN

ORDER ON MOTION.[1]

Cause Number: 3-93-162-CV

Date Tex. R App. P. 19(c) notice mailed:[2] 2-6-95

Type of motion: Rehearing

Party filing motion: Appellant

Document to be filed: _____

If motion for extension for time:

Deadline to file document: 2-2-95

Number of extensions previously granted: _____

Extension of time requested until: _____

Ordered that motion is:

Granted

If document is to be filed,
document due: _____

X Overruled (e.g., rehearing, Tex. R App. P. 100(c), and other routine motions)

Dismissed (e.g., want of jurisdiction, moot)

Judge's signature: /s/initials/ JWJ [Justice Woodie Jones]
___Acting individually _X_Acting for the Court

Date: 3-1-95

[1] Except overruling motions for leave to file original proceedings and granting motions to dismiss the appeal.

[2] Absent emergency, must wait ten days before acting on motion except for motion regarding extension of time to file record or brief in criminal case. See Tex. R App. P. 19(e).

Note: Single justice may grant or deny any request for relief properly sought by motion except for the following civil matters: (1) leave to file petitions for writ of mandamus, prohibition, or injunction; (2) motion to dismiss or otherwise determine an appeal; and (3) motion for rehearing. Tex. R App. P. 19(f).

APPENDIX F

TEXAS RULES OF CIVIL PROCEDURE
GENERAL RULES:

RULE 13

Effect of Signing of Pleadings, Motions and Other Papers; Sanctions.

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper, that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.

Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for

purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

(Amended July 15,1987, eff. Jan 1,1988; April 24, 1990, eff. Sept. 1, 1990.)

Notes and Comments

Source: Texas Rule 51 (for District and County Courts), unchanged.

Comment to 1990 change: To require notice and hearing before a court determines to impose sanctions, to specify that any sanction imposed be appropriate, and to eliminate the 90-day "grace" period provided in the former version of the rule.